

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7987 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1-5 No

SHAKILA AJAMBHAI SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR JF SHAH for Petitioner

MR DA BAMBHANIA for Respondent No. 1

MR YN OZA for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 16/07/98

ORAL JUDGEMENT

By way of this Special Civil Application the petitioner seeks direction to quash and set aside the order dated 2.3.1996 whereby the petitioner has been posted in the lower post of Auxiliary Nurse Midwife.

Necessary facts are that the petitioner came to be appointed as Auxiliary Nurse Midwife (hereinafter

referred to as "ANM") by order dated 21.7.1979. The petitioner having successfully undergone the course of General Nursing was appointed as Nurse, Midwife at the Community Health Centre, Valia by order dated 1.11.1988. By Notification dated 18.6.1993 the State Government transferred the Health Community Centre, Valia from panchayat to the State Government. The petitioner continued to work at Valia as Nurse-Midwife. However, the petitioner surprised that by order dated 2.3.1996 she has been reverted to the post of ANM.

An affidavit has been filed by Dr. J.K. Jain on behalf of respondent No. 2 C.D.H.O., D.P. Bharuch. It is stated that as per the letter dated 11.3.1996 Smt. Panchal, at S. No. 1 has been posted at Community Health Centre at Vagra on deputation and Smt. Khanvilkar at S. No. 2 has been continued at Community Health Centre, Valia. Both the employees are senior to the petitioner. They have been continued at Vagra and Valia as per the administrative reasons. In view of this, the petitioner being junior to both of them has been continued at her original place of posting but on the lower post. It is stated that there is no vacant post available of the staff nurse in the office of the panchayat and no additional post of staff nurse has been sanctioned.

I have heard learned counsel for the parties. Simply because there is no post of Nurse available at Valia centre the petitioner cannot be reduced in her status by reverting her from the post of Nurse Midwife to ANM. The petitioner was promoted as Nurse-Midwife as back as in the year 1988. It is contended by Mr. Hasulkar, govt. solicitor, that the petitioner was working as nurse of adhoc basis when there being no vacancy she is reverted. There is no substance in the contention of Mr. Hasulkar. The petitioner has continued since 1988 i.e about 10 years. Even in view of this she could not have been reverted simply for the reasons that there was no post available at the particular centre. It is not the case of the respondent that she was to be sent on another centre on the post of Nurse-Midwife and she declined to join there. Thus, in my view the reversion of the petitioner on the post of ANM from Nurse-Midwife is ex facie illegal.

In view of the aforesaid, this Special Civil Application is allowed and the impugned order dated 2.3.1996 reducing the petitioner to the status of ANM is quashed and set aside. Rule made absolute to the aforesaid extent.

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